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2 AMERICAN ACADEMY
3 OF MATRIMONIAL LAWYERS
4 ARIZONA CHAPTER
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6 PHOENIX, ARIZONA 85018

7 IN THE SUPREME COURT

8 STATE OF ARIZONA

9 In the Matter of

10 PETITION TO AMEND RULE 74 OF
11 THE ARIZONA RULES OF FAMILY
12 LAW PROCEDURE.

Supreme Court Number R-15-0006

COMMENT OF AMERICAN
ACADEMY OF MATRIMONIAL
LAWYERS, ARIZONA CHAPTER,
TO PROPOSED AMENDMENTS TO
RULE 74, ARFLP, CONCERNING
PARENTING COORDINATION

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16 This comment is filed regarding pending Petition R-15-0006, proposed changes to Arizona
17 Rule of Family Law Procedure, Rule 74, which involves parenting coordination. This
18 Commenter's request is that the proposed changes be withdrawn in their entirety.

19 **BACKGROUND.** The American Academy of Matrimonial Lawyers (AAML) is
20 comprised of attorneys who have demonstrated substantial experience in matrimonial law,
21 including complex matters related to custody and support of children, property division and
22 spousal support. AAML Fellows are recognized by the bench and bar as leading
23 practitioners in matrimonial law and encourage the study and improvement in the practice,
24 and the elevation of standards relating to matrimonial law. The Arizona Chapter of AAML
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1 feels the proposed changes to Rule 74, Arizona Rules of Family Law Procedure, are
2 significant and the Chapter submits these comments as a request that the proposed changes
3 be eliminated in their entirety. A full representative committee should be formed to address
4 all concerns about Rule 74 and the possibility of future changes. The changes as presently
5 proposed do not address the actual litigant concerns which were raised, and raise significant
6 new concerns about due process and the parenting coordination process in general.
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8 **COMMENTS ABOUT THE PROPOSED CHANGES.**

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10 The stated purpose of the 2014 Workgroup regarding Rule 74 was to address litigant
11 concerns about

- 12 • PC fees
- 13 • lack of recourse/ appeal process
- 14 • qualifications of PCs
- 15 • scope of authority

16 (Petition to Amend filed 1/8/2015, page 2)

17 1. **Fee Structure.** The proposed change to Section F regarding fee structure is a
18 significant change that will make parenting coordination a cumbersome and more expensive
19 process for litigants. The proposal to limit the advance fee deposit that can be requested by
20 a parenting coordinator to only two hours of time, despite the fact that most parenting
21 coordination issues will take many more hours to resolve, will tie up the parties and the
22 parenting coordinator in administrative issues, including requesting replenishment of the fee
23 deposit after every two hours of work. For instance, prior to the initial meeting, the
24 parenting coordinator will need to review the relevant court documents along with
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1 documents submitted by each of the parties. There must then be a meeting with each party
2 following by a written recommendation to the court. As a result, by the conclusion of the
3 initial contact, the fees will almost certainly be greater than the two hour proposal. The
4 proposal reflects a misunderstanding of the parenting coordination process and an apparent
5 feeling that many parenting coordination cases can be resolved in two hours or less. This is
6 an incorrect assumption.
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8 2. **Affordability for Litigants and Allocation of Costs.** If the primary
9 problem with parenting coordination is that some parties can't afford the service, then those
10 cases should not be assigned to parenting coordinators. Those cases must be retained by the
11 assigned judge, and whatever hearings and status conferences are necessary need to be
12 scheduled on the court's regular calendar, even if that takes significantly more time.
13 Parenting coordination should not be forced on cases that cannot afford those services.
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15 The cost of parenting coordination services is problematic, and can only be
16 addressed in very limited ways by a Rule change. Most changes should come through
17 judicial education about the use of parenting coordinators. Problems arise when a case
18 involving critical issues of supervised visitation, parent substance abuse, or a child's
19 medical treatment is referred to parenting coordination, but one or both parties cannot afford
20 the fees. If this occurs, the parties are essentially locked out of court, and the parties are at
21 the mercy of the parenting coordinator. When a parenting coordinator learns of this
22 situation, he should immediately report that situation to the Court for further review.
23 Unless the Court can make a finding, after an evidentiary hearing, that the parties can in fact
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1 afford parenting coordination, the parenting coordination appointment should be terminated
2 and the parties permitted to proceed in court.

3 A straightforward way of dealing with many of the listed problems with parenting
4 coordination fees would be to change Rule 74 to reflect that a parenting coordinator can be
5 initially appointed in only two circumstances: (1) upon stipulation of the parties; or (2)
6 after a finding by the Court that the parents' conflict has demonstrably harmed the children,
7 together with a finding that all parties can afford parenting coordination services. If a
8 Committee is formed, as the Arizona Chapter of AAML requests, the Committee can set
9 parameters and specific findings that the Court should make before appointment.
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12 The Court should always retain the decision-making authority about the parties'
13 financial circumstances and allocation of fees; that responsibility cannot be delegated to the
14 parenting coordinator. Unfortunately, one of the recommended proposed changes to Rule
15 74 "Adjustment to Allocation of Fees" would transfer responsibility for allocation of fees to
16 the parenting coordinator, who is not routinely in possession of information about the
17 parties' financial circumstances. [New Section F (2)]
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20 3. **Parenting Coordinator Authority.** The proposed change to Section H
21 deletes language from the existing Rule about what a parenting coordinator can do. That
22 language provides important information to the litigants by succinctly describing the types
23 of issues that can be handled by a parenting coordinator. There is no obvious connection
24 between removing this language and the litigant concerns stated above, and no explanation
25 why that language should be deleted. Those areas of authority should not be kept secret
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1 from the parties.

2 4. **New Authority for “Binding Temporary Change”**. The proposal to add new
3 Section I(2) “Binding Temporary Change on an Emergency Basis” will cause confusion
4 and may conflict with other provisions in the Rule. This Section is entirely new and
5 provides, in part, that under certain circumstances, the parenting coordinator “may make a
6 binding temporary change in the court’s *legal decision-making or parenting time orders* if
7 doing so is in the best interests of the children.” (Emphasis added) This reference to the
8 parenting coordinator making a change to legal decision-making orders, even in limited
9 circumstances, is a very serious change which is not contemplated by the existing Rule.
10 The parenting coordinator already has authority to make a “binding temporary decision”,
11 per existing Section G [new Subsection I(1)], for a short-term, emerging and time sensitive
12 situation, and this existing procedure has been sufficient. It is not clear what the intent of
13 the new proposed Section I(2) is intended to cover, but the issue of changing a parent’s
14 legal decision-making authority, even on a short-term basis, needs more study before such a
15 drastic change is suggested. While the proposal that the court must set an emergency
16 hearing within ten (10) days and a full evidentiary hearing within sixty (60) days is
17 laudable, in actual practice, those timelines may not be met and the changes made by a
18 parenting coordinator under that Section could be in effect far longer than those time
19 periods.
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25 The suggestion of this new role for parenting coordinator (determining a parent’s
26 legal decision-making based on impaired functioning on an emergency basis) is even more

1 concerning when combined with the financial proposals discussed in #1 above. A parenting
2 coordinator cannot be given significant additional responsibilities while also being
3 prohibited from taking an advance fee deposit sufficient to cover the time expended.
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5 4. **Notice to Court Requirement.** The proposal to add new Section K will add
6 additional costs to parenting coordination services. As the parenting coordinator will be
7 required to notify the Court each and every time the parenting coordinator speaks with third
8 parties or requests documents, the parties will be charged with the cost of filing that notice
9 with the Court. There is no explanation as to why the Court needs to be notified of those
10 procedures.
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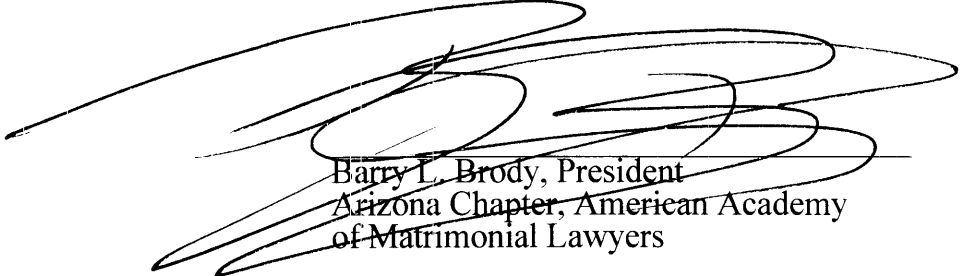
12 6. **Reports.** The proposed change which is new Section L could be construed
13 as leaving a parenting coordinator's report entirely out of the court file. This provision will
14 cause additional confusion and cost to the parties, because the parties and their counsel will
15 be left without access to portions of the Parenting Plan. .
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17 7. **Hearings on Objections and Due Process(New Section N).** This proposal
18 removes the requirement that the Court will set a hearing on objections to parenting
19 coordinator recommendations. The language which is to be removed states "The judicial
20 officer shall set a hearing if requested." That sentence preserves due process for the
21 parties by establishing judicial review of a recommendation done by a quasi-judicial officer.
22 It is difficult to imagine how due process to the parties is preserved if a reasonable
23 opportunity to be heard is not required on objections.
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26 **CONCLUSION**

1 Based on the significant changes which are proposed, the unintended consequences
2 of many of these changes, and the significant infringement on parents' due process rights,
3 the Arizona Chapter of the American Academy of Matrimonial Lawyers submits that the
4 Rule Petition as proposed should be withdrawn in their entirety. A full Committee of
5 representative stakeholders should be appointed to address any concerns about parenting
6 coordination, for the purposes of recommending changes which are necessary. That
7 Committee should deliberate any necessary changes with the same thoughtful process that
8 went into the origination of Rule 74 in 2003-2005, with public hearings and significant
9 comment time for any new proposals.
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12 RESPECTFULLY SUBMITTED this 22nd day of April, 2015.

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16 Barry L. Brody, President
17 Arizona Chapter, American Academy
18 of Matrimonial Lawyers
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